

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

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Administrative Law Judge

Findings Of Fact Based Upon Joint Stipulation:

1. TAXPAYER ("Taxpayer") purchased parts for its own use as rolling stock from Illinois vendors. (Stip. 1)

2. Taxpayer erroneously paid what sales tax it believed owed with respect to those parts to its Illinois vendors. (Stip. 2, 3)

3. Upon discovery that it erroneously paid tax to its vendors, taxpayer deducted such payment from liability shown on its monthly return. (Stip. 3, 4)

4. The amounts deducted by taxpayer were for Use Tax payments which would have been due to vendors but for the rolling stock exemption provided in 35 ICLS Sec. 105/3-55(b) and for reimbursement for any Home Rule Retailers Occupation Tax or Transit Tax that would have been due by the vendors but for the rolling stock exemption in 35 ICLS Sec. 120/2-5(12) and incorporated by reference in those Acts.

Conclusions of Law:

Taxpayer, as a user of tangible personal property purchased from retailers maintaining a place of business in Illinois is normally required to pay tax to those retailers. The Use Tax provides as follows:

"Tax imposed. A tax is imposed upon the privilege of using in this state tangible personal property purchased at retail from a retailer, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition." (35 ILCS 105/3)

"Collection. The tax imposed by this Act shall be collected from the purchaser by a retailer maintaining a place of business in this State or a retailer authorized by the Department under Section 6 of this Act, and shall be remitted to the Department as provided in Section 9 of this Act." (35 ILCS 105/3-45)

The Use Tax Act, however, provides an exemption for tangible personal purchased for use as rolling stock by interstate carriers. (35 ILCS 105/3-55(b)) The parties have stipulated that the payment of tax by taxpayer to its Illinois vendors was erroneous based upon the rolling stock exemption. (Stip.

1, 2, 3) Furthermore the parties have stipulated that taxpayer has tried to claim its erroneously paid tax through the method of taking a deduction on its monthly sales and Use Tax return. (Stip. 4)

The Use Tax Act provides a statutory method of obtaining a credit or refund. Such method is contained in 36 ILCS 105/19.

That section provides as follows:

"If it shall appear that an amount of tax or penalty or interest has been paid in error hereunder to the Department by a purchaser, as distinguished from the retailer, whether such amount be paid through a mistake of fact or an error of law, such purchaser may file a claim for credit or refund with the Department. If it shall appear that an amount of tax or penalty or interest has been paid in error to the Department hereunder by a retailer who is required or authorized to collect and remit the Use Tax, whether such amount be paid through a mistake of fact or an error of law, such retailer may file a Claim for Credit or refund with the Department, provided that no credit or refund shall be allowed for any amount paid by any such retailer unless it shall appear that he bore the burden of such amount and did not shift the burden thereof to anyone else (as in the case of a duplicated tax payment which the retailer made to the Department and did not collect from anyone else), or unless it shall appear that he or she or his or her legal representative has unconditionally repaid such amount to his vendee (1) who bore the burden thereof and has not shifted such burden directly or indirectly in any manner whatsoever; (2) who, if he has shifted such burden, has repaid unconditionally such amount to his or her own vendee, and (3) who is not entitled to receive any reimbursement therefor from any other source than from his vendor, or to be relieved of such burden in any other manner whatsoever. If it shall appear that an amount of tax has been paid in error hereunder by the purchaser to a retailer, who retained such tax as reimbursement for his or her tax liability on the same sale under the Retailers' Occupation Tax Act, and who remitted the amount involved to the Department under the Retailers' Occupation Tax Act, whether such amount be paid through a mistake of fact or an error of law, the procedure for recovering such tax shall be that prescribed in Sections 6, 6a and 6c of the Retailers' Occupation Tax Act."

As can be seen, this section makes it clear that the Department can only provide for credit or refund to users who erroneously pay tax directly to the Department. The section provides a specific method to be used when the erroneous payment reaches the Department via a vendor or retailer.

In addition, the Illinois Supreme Court in the case of Snyderman v. Issacs, 31 Ill. 2d 192, 201 N.E. 2d 106 (1964) the Court provided as follows:

"To protect the real taxpayer and to prevent unjust enrichment of any other party, the legislature has provided both in the Use Tax Act and in the Retailers' Occupation Tax Act that the only person entitled to receive credit is the remitter of the tax and it has also required that where the remitter has not himself borne the burden of the tax, he must directly or indirectly reimburse the actual taxpayer before filing his claim with the Department. Ill. Rev. Stat. 1961, Chap. 120, Pars. 439.19, 445.

In this case the complaint makes it clear that the lessee-plaintiff did not remit the tax, and such a lessee, has no statutory right to recover taxes remitted by his lessor."

Since the erroneous tax was presumably paid to the Department by taxpayer's vendor, the statute requires the retailer to refund the tax to taxpayer and file a claim. That was not done in this instance. Without statutory authority, the Department is unable to allow the deduction claimed. The statute makes no provision for taking a deduction for erroneously paid taxes to a vendor except in the case of a retailer who paid tax on the purchase of items for resale. Only then is a credit allowed for tax paid to a vendor and only with respect to Retailers' Occupation Tax incurred on the resale of the item upon which tax was erroneously paid. (See 35 ILCS 120/6)

Therefore, it is my opinion that the deduction taken by taxpayer for tax erroneously paid to its vendor was properly disallowed.

I recommend that the Department's denial of the Claim for Credit be affirmed.

Daniel D. Mangiamele
Administrative Law Judge